

## INSURANCE DIVISION[191]

### Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 502.605, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 50, “Regulation of Securities Offerings and Those Who Engage in the Securities Business,” Iowa Administrative Code.

The rules in Chapter 50 prescribe the terms and conditions under which broker-dealers, investment advisers and securities offerings operate. The proposed amendments do the following:

Item 1 amends rule 191—50.1(502) to add two definitions that are used in the amendments that follow.

Item 2 amends rule 191—50.2(502) to eliminate billing the salary costs as part of an audit fee and to update the deposit to use the commerce revolving fund.

Item 3 amends subrules 50.12(1) and 50.12(2) to provide for automatic acceptance of Financial Industry Regulatory Authority (FINRA) examinations.

Item 4 rescinds paragraph 50.16(1)“c,” the current suitability requirement, and adopts a new paragraph that sets forth suitability and know-your-customer requirements that parallel recent FINRA rule updates.

Item 5 amends subrule 50.16(2) by adding new paragraph “k,” whose language applicable to persons in the securities business mirrors the Division’s language for insurance producers to restrict the use of undue influence.

Item 6 amends subrule 50.31(1) to require the filing of the Uniform Application for Investment Adviser Registration (Form ADV) Part 2 electronically with the Investment Advisory Registration Depository (IARD) instead of on paper with the administrator.

Item 7 rescinds subrule 50.34(2) and adopts a new subrule to recognize that Form ADV Part 2 is now filed electronically with IARD.

Item 8 rescinds rule 191—50.36(502) and adopts a new brochure delivery rule for investment advisers that is based on a North American Securities Administrators Association (NASAA) model.

Item 9 amends rule 191—50.38(502) regarding prohibited conduct in providing investment advice to update the rule by adding recent NASAA model amendments and by relocating three paragraphs from this rule to new rule 191—50.46(502).

Items 10 to 13 rescind subrules 50.39(1) and 50.39(2) and adopt new subrules in lieu thereof; renumber subrule 50.39(3) as 50.39(4); adopt new subrule 50.39(3) to update investment adviser custody requirements by adding recent NASAA model amendments regarding custody to make the rule more consistent with United States Securities and Exchange Commission (SEC) rules; and amend renumbered subrule 50.39(4) to revise and adopt definitions.

Item 14 amends rule 191—50.40(502) regarding investment adviser minimum financial requirements by adopting recent NASAA model amendments.

Item 15 amends rule 191—50.41(502) regarding investment adviser bonding requirements by adopting recent NASAA model amendments.

Items 16 to 19 amend rule 191—50.42(502) regarding investment adviser record-keeping requirements to incorporate recent NASAA model amendments.

Item 20 amends rule 191—50.43(502) regarding investment adviser financial reporting requirements by adopting recent NASAA model amendments.

Item 21 adds new rule 191—50.45(502) to create an exemption for investment advisers of private funds, based on a NASAA model that coordinates with recent SEC rule making.

Item 22 adds new rule 191—50.46(502) that specifies the contents of an investment advisory contract based on a NASAA model.

Item 23 amends subrule 50.53(7) by correcting an internal reference.

Item 24 renumbers rule 191—50.54(502) as rule 191—50.55(502).

Item 25 adds new rule 191—50.54(502) to adopt the state model for denial, suspension or revocation of agent or investment adviser representative registration for failure to pay state debt.

Item 26 amends rule 191—50.66(502) to update certain NASAA guidelines that are used in the review of direct participation programs and equity offerings.

Item 27 amends subrule 50.87(1) by clarifying the authorization date for filers.

Item 28 amends subrule 50.88(2) by excluding the value of a primary residence when net worth for accredited investors is calculated.

Item 29 adds new rule 191—50.89(502) designating certain securities manuals for purposes of an exemption.

Any interested person may make written comments on the proposed amendments to Chapter 50 on or before May 21, 2013. Written comments may be sent to Craig Goettsch, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Comments may also be submitted electronically to [craig.goettsch@iid.iowa.gov](mailto:craig.goettsch@iid.iowa.gov) or via facsimile to (515)281-3059.

A public hearing will be held on May 21, 2013, at 10 a.m. in the Lobby Conference Room of the Insurance Division, 330 Maple Street, Des Moines, Iowa, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine remarks to the subject of the proposed amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Insurance Division and advise of their specific needs.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 502.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions in rule **191—50.1(502)**:

“*Form ADV-E*” means the Certificate of Accounting of Client Securities and Funds in the Possession or Custody of an Investment Adviser.

“*PCAOB*” means the Public Company Accounting Oversight Board.

ITEM 2. Amend rule 191—50.2(502) as follows:

**191—50.2(502) Cost of audit or inspection.**

**50.2(1)** A broker-dealer or investment adviser may be assessed ~~the greater of a flat fee of \$100 or the actual and necessary costs of salaries, travel, lodging, and meals~~ other expenses directly attributable to an audit or inspection made pursuant to Iowa Code section 502.411(4). The assessment of costs of ~~salaries, travel, lodging, and meals~~ other expenses, if any, shall be determined in accordance with the department of administrative services (DAS) state accounting enterprise Accounting Policy and Procedures Manual in effect at the time of the audit or inspection.

**50.2(2)** If costs are assessed under subrule 50.2(1), the administrator may, upon completion of the examination, or at such regular intervals prior to completion as the administrator determines, prepare an account of the costs incurred in performing and preparing the report of the examination which shall be charged to and paid by the broker-dealer or investment adviser examined.

~~**50.2(2)**~~ **50.2(3)** The administrator shall notify the broker-dealer or investment adviser of the expenses attributable to the audit or inspection as soon as practicable.

~~**50.2(3)**~~ **50.2(4)** Assessments collected by the administrator pursuant to this rule shall be remitted to the state treasury paid to the administrator and shall be deposited as provided in Iowa Code section 505.7.

This rule is intended to implement Iowa Code section 502.411(4).

ITEM 3. Amend subrules 50.12(1) and 50.12(2) as follows:

**50.12(1)** Agent registration.

~~a. An Every applicant for registration as an Iowa-registered agent of a FINRA or non-FINRA member broker-dealer shall agent of a broker-dealer shall:~~

~~(1) Pass one of the following FINRA examinations: Series 1, 2, 6, 7, 11, 17, 22, 24, 26, 39, 40, 52, 53, or 62. In the event that an applicant for registration as an agent has received a waiver by FINRA of a FINRA examination otherwise required by this paragraph, the FINRA waiver will be accepted in lieu of the examination requirement;~~

~~(2) a. Pass the FINRA Series 63 or Series 66 examination Uniform Securities Agent State Law Examination (Series 63) or the Uniform Combined State Law Examination (Series 66);~~

~~b. Pass the appropriate qualifying examination administered by the Financial Industry National Regulatory Authority (FINRA). In the event that an applicant for registration as an agent has received a waiver by FINRA of a FINRA examination otherwise required by this paragraph, the FINRA waiver will be accepted in lieu of the examination requirement;~~

~~(3) c. File an accurate and complete Form U-4 with CRD; and~~

~~(4) d. Pay a \$40 filing fee to FINRA if applying for registration as an agent of a FINRA member broker-dealer, or to the administrator if applying for registration as an agent of a non-FINRA member broker-dealer.~~

~~b. An applicant may file with the administrator a written request for waiver of the examination requirement contained in paragraph “a” pursuant to rule 191—4.21(17A), et seq. A waiver will be considered for an applicant with ten years of continuous experience in the securities industry. A waiver of the Series 63 examination will not be granted.~~

~~50.12(2) No application for an agent registration shall be considered for approval until all requirements of subrule 50.12(1), as applicable, are met. In the administrator’s discretion, an applicant may be required to provide additional information regarding any aspect of the application. The application shall be considered incomplete until any such additional information is provided. Any individual who is out of the business of effecting transactions in securities for less than two years from the date of filing an application and who has previously passed an examination required in subrule 50.12(1) shall not be required to retake the examination to be eligible to be relicensed upon application.~~

ITEM 4. Rescind paragraph **50.16(1)“c”** and adopt the following **new** paragraph in lieu thereof:

c. Suitability:

(1) Failing to use reasonable diligence, in regard to the opening and maintenance of every account, to know and retain the essential facts concerning every customer and concerning the authority of each person acting on behalf of such customer;

(2) Recommending a transaction or investment strategy involving a security or securities without a reasonable basis to believe that the transaction or investment strategy is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer’s investment profile. A customer’s investment profile includes, but is not limited to, the customer’s age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the broker-dealer or agent in connection with such recommendation;

ITEM 5. Amend subrule 50.16(2) as follows:

**50.16(2)** Dishonest or unethical practices by an agent in the securities business as prohibited pursuant to Iowa Code section 502.412(4)“m” include, but are not limited to, the following:

a. to g. No change.

h. Evading or otherwise negating the requirements of paragraph 50.16(2)“a,” “f” or “g” by terminating the customer relationship for the purpose of soliciting or accepting a loan or gift or being named as a beneficiary, executor or trustee in a will or trust that the agent is otherwise not permitted to solicit or accept. An agent is not in violation of this paragraph if the agent has made a bona fide

termination of the customer relationship and conducted no securities-related business or other business for a period of three years with the customer; ~~and~~

*i.* Engaging in conduct specified in subrule 50.16(1), paragraphs “b” to “f,” “i,” “j,” “n” to “q,” “u,” and “w” to “aa-”<sub>2</sub>;

*j.* Engaging in conduct deemed dishonest or unethical in rule 191—50.54(502); ~~and~~

*k.* Employing any method or tactic which uses undue pressure, force, fright, or threat, whether explicit or implied, to solicit the purchase or sale of securities, or committing any act which shows that the agent has exerted undue influence over a person.

ITEM 6. Amend subrule 50.31(1) as follows:

**50.31(1) Investment adviser applications—required filings.** The application for initial registration as an investment adviser shall be made by:

*a.* Filing Form ADV ~~Part I~~ Parts 1 and 2 with IARD; ~~and~~

*b.* Remitting the \$100 filing fee to IARD pursuant to Iowa Code section 502.410(3); ~~and~~

~~*c.* Filing Form ADV Part II with the administrator.~~

ITEM 7. Rescind subrule 50.34(2) and adopt the following **new** subrule in lieu thereof:

**50.34(2) Form ADV Part 2.** The administrator may:

*a.* Accept a copy of Part 2 of Form ADV as filed electronically with IARD; or

*b.* Deem Part 2 of Form ADV filed if a federal covered investment adviser provides, within five days of a request, Part 2 of Form ADV to the administrator. Because the administrator deems Part 2 of Form ADV to be filed, a federal covered investment adviser is not required to submit Part 2 of Form ADV to the administrator unless specifically requested to do so.

ITEM 8. Rescind rule 191—50.36(502) and adopt the following **new** rule in lieu thereof:

**191—50.36(502) Investment adviser brochure.**

**50.36(1) General requirements.**

*a.* Unless otherwise provided in this rule, an investment adviser registered or required to be registered pursuant to Section 403 of the Act shall furnish each advisory client and prospective advisory client with:

(1) A brochure which may be a copy of Part 2A of its Form ADV or written documents containing the information required by Part 2A of Form ADV;

(2) A copy of its Part 2B brochure supplement for each individual:

1. Providing investment advice and having direct contact with clients in this state; or

2. Exercising discretion over assets of clients in this state, even if no direct contact is involved;

(3) A copy of its Part 2A Appendix 1 wrap fee brochure if the investment adviser sponsors or participates in a wrap fee account;

(4) A summary of material changes, which may be included in Form ADV Part 2 or given as a separate document; and

(5) Such other information as the administrator may require.

*b.* The brochure must comply with the language, organizational format and filing requirements specified in the Instructions to Form ADV Part 2.

*c.* Notwithstanding the SEC’s Instructions for Part 2A of Form ADV, fee changes constitute material changes requiring an update to all parts of Form ADV.

**50.36(2) Delivery.**

*a. Initial delivery.* An investment adviser, except as provided in paragraph 50.36(2)“c,” shall deliver the Part 2A brochure and any brochure supplements required by rule 191—50.36(502) to a prospective advisory client:

(1) Not less than 48 hours before an investment adviser enters into any advisory contract with such client or prospective client; or

(2) At the time an advisory client enters into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

*b. Annual delivery.* An investment adviser, except as provided in paragraph 50.36(2)“c,” must:

(1) Deliver within 120 days of the end of its fiscal year a free, updated brochure and related brochure supplements which include or are accompanied by a summary of material changes; or

(2) Deliver a summary of material changes that includes an offer to provide a copy of the updated brochures and supplements and information on how the client may obtain a copy of the brochures and supplements, provided that advisers are not required to deliver a summary of material changes if no material changes have taken place since the last summary and brochure delivery.

*c. Exceptions to delivery.* Delivery of the brochure and related brochure supplements required by paragraphs 50.36(2) “a” and “b” need not be made to:

(1) Clients who receive only impersonal advice and who pay less than \$500 in fees per year; or

(2) An investment company registered under the Investment Company Act of 1940; or

(3) A business development company as defined in the Investment Company Act of 1940 and whose advisory contract meets the requirements of Section 15c of that Act.

*d. Electronic delivery.* Delivery of the brochure and related supplements may be made electronically if the investment adviser:

(1) In the case of an initial delivery to a potential client, obtains verification that readable copies of the brochure and supplements were received by the client;

(2) In the case of other than initial deliveries, obtains each client’s prior consent to provide the brochure and supplements electronically;

(3) Prepares the electronically delivered brochure and supplements in the format prescribed in subrule 50.36(1) and Instructions to Form ADV Part 2;

(4) Delivers the brochure and supplements in a format that can be retained by the client in either electronic or paper form; or

(5) Establishes procedures to supervise personnel transmitting the brochure and supplements and to prevent violations of this rule.

**50.36(3) Other disclosures.** Nothing in this rule shall relieve any investment adviser from any obligation pursuant to any provision of the Act or the rules thereunder or other federal or state law to disclose any information to its advisory clients or prospective advisory clients not specifically required by this rule.

**50.36(4) Definitions.** For the purpose of this rule:

*a. “Contract for impersonal advisory services”* means any contract relating solely to the provision of investment advisory services:

(1) By means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;

(2) Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or

(3) Any combination of the foregoing services.

*b. “Entering into,”* in reference to an advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.

This rule is intended to implement Iowa Code section 502.411(7).

ITEM 9. Amend rule 191—50.38(502) as follows:

**191—50.38(502) Dishonest or unethical business practices of investment advisers and investment adviser representatives, or fraudulent or deceptive conduct by federal covered investment advisers. Prohibited conduct in providing investment advice.**

**50.38(1)** An investment adviser, an investment adviser representative, or a federal covered investment adviser ~~has is~~ a fiduciary and has a duty to act primarily for the benefit of its clients. ~~The federal statutory and regulatory provisions referenced in this rule apply to investment advisers and federal covered investment advisers, to the extent permitted by the NSMIA. This rule Rule 191—50.38(502) applies to federal covered investment advisers to the extent that the alleged conduct is fraudulent, deceptive, or as otherwise prohibited~~ permitted by the NSMIA.

~~50.38(1)~~ ~~An~~ While the extent and nature of this duty varies according to the nature of the relationship between an investment adviser, an investment adviser representative, or a federal covered investment adviser and its clients and the circumstances of each case, an investment adviser, an investment adviser representative, or a federal covered investment adviser shall not engage in dishonest or unethical business practices or prohibited fraudulent, and deceptive, or manipulative conduct including, but not limited to:

a. Recommending to a client to whom supervisory, management, or consulting investment advisory services are provided the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser, investment adviser representative, or federal covered investment adviser;

b. Exercising any discretionary ~~power~~ authority in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten business days after the date of the first transaction placed pursuant to discretionary authority, unless the discretionary ~~power~~ authority relates solely to the price at which, or the time when, an order for a definite amount of a specified security shall be executed, or both;

c. Inducing trading in a client's account ~~trading~~ that is excessive in size or frequency compared to the financial resources, investment objectives, and character of the account;

d. Placing an order to purchase or sell a security for a client account without authority to do so;

e. Placing an order to purchase or sell a security for a client account upon instruction of a third party without first obtaining a written third-party trading authorization from the client;

f. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds;

g. Loaning money or securities to a client unless the investment adviser is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser;

h. Misrepresenting to any ~~advisory~~ client, or prospective ~~advisory~~ client, the qualifications of the investment adviser, investment adviser representative, or federal covered investment adviser or any employee, or affiliated persons of the investment adviser, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading;

i. Providing a report or recommendation to any advisory client prepared by someone other than the investment adviser, investment adviser representative, or federal covered investment adviser without disclosing that fact. This prohibition does not apply when the investment adviser, investment adviser representative, or federal covered investment adviser uses published research reports or statistical analyses to render advice or when an investment adviser, investment adviser representative, or federal covered investment adviser orders such a report in the normal course of providing service;

j. Charging a client an unreasonable ~~advisory~~ fee;

k. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest regarding the investment adviser, investment adviser representative, or federal covered investment adviser or any of its employees, or affiliated persons which could reasonably be expected to impair the rendering of unbiased and objective advice including, but not limited to:

(1) Compensation arrangements connected with investment advisory services to clients which are in addition to compensation from such clients for such services; and

(2) Charging a client an investment advisory fee for rendering advice when a ~~commission~~ compensation for ~~executing~~ effecting securities transactions pursuant to such advice will be received by the investment adviser, investment adviser representative, or federal covered investment adviser or its employees or affiliated persons;

l. While acting as principal for its own advisory account, knowingly selling any security to or purchase any security from a client, or while acting as broker-dealer for a person other than the client, knowingly effecting any sale or purchase of any security for the account of the client, without disclosing

to the client in writing before the completion of the transaction the capacity in which it is acting and obtaining the consent of the client to the transaction.

(1) The prohibitions of paragraph 50.38(1) "l" shall not apply to any transaction with a customer of a broker-dealer if the broker-dealer is not acting as an investment adviser in relation to the transaction.

(2) The prohibitions of paragraph 50.38(1) "l" shall not apply to any transaction with a customer of a broker-dealer if the broker-dealer acts solely as an investment adviser:

1. By means of publicly distributed written materials or publicly made oral statements;

2. By means of written materials or oral statements not purporting to meet the objectives or needs of specific individuals or accounts;

3. Through the issuance of statistical information containing no expressions of opinion as to the investment merits of a particular security; or

4. Any combination of the foregoing services.

(3) Publicly distributed written materials or publicly made oral statements shall disclose that, if the purchaser of the advisory communication uses the investment adviser's services in connection with the sale or purchase of a security which is a subject of the communication, the investment adviser may act as principal for its own account or as agent for another person. Compliance by the investment adviser with the foregoing disclosure requirement shall not relieve the investment adviser of any other disclosure obligations under the Act.

(4) Definitions for purposes of rule 191—50.38(502):

1. "Publicly distributed written materials" means written materials which are distributed to 35 or more persons who pay for those materials.

2. "Publicly made oral statements" means oral statements made simultaneously to 35 or more persons who pay for access to those statements.

m. The prohibitions of rule 191—50.38(502) shall not apply to an investment adviser effecting an agency cross transaction for an advisory client provided the following conditions are met:

(1) The advisory client executes a written consent prospectively authorizing the investment adviser to effect agency cross transactions for such client;

(2) Before obtaining such written consent from the client, the investment adviser makes full written disclosure to the client that, with respect to agency cross transactions, the investment adviser will act as broker-dealer for, receive commissions from, and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions;

(3) At or before the completion of each agency cross transaction, the investment adviser or any other person relying on paragraph 50.38(1) "m" sends the client a written confirmation. The written confirmation shall include:

1. A statement of the nature of the transaction;

2. The date the transaction took place;

3. An offer to furnish, upon request, the time when the transaction took place; and

4. The source and amount of any other remuneration the investment adviser received or will receive in connection with the transaction. In the case of a purchase, if the investment adviser was not participating in a distribution, or, in the case of a sale, if the investment adviser was not participating in a tender offer, the written confirmation may state whether the investment adviser has been receiving or will receive any other remuneration and that the investment adviser will furnish the source and amount of such remuneration to the client upon the client's written request;

(4) At least annually, and with or as part of any written statement or summary of the account from the investment adviser, the investment adviser or any other person relying on paragraph 50.38(1) "m" sends each client a written disclosure statement identifying:

1. The total number of agency cross transactions for the client during the period since the date of the last such statement or summary; and

2. The total amount of all commissions or other remuneration the investment adviser received or will receive in connection with agency cross transactions for the client during the period;

(5) Each written disclosure and confirmation required by paragraph 50.38(1)“m” must include a conspicuous statement indicating that the client may revoke the written consent required under subparagraph 50.38(1)“m”(1) at any time by providing written notice to the investment adviser;

(6) No agency cross transaction may be effected in which the same investment adviser recommended the transaction to both any seller and any purchaser;

(7) “Agency cross transaction for an advisory client,” for purposes of paragraph 50.38(1)“m,” means a transaction in which a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, including an investment adviser representative, acts as a broker-dealer for both the advisory client and another person on the other side of the transaction. When acting in such capacity, such person is required to be registered as a broker-dealer in this state unless excluded from the definition;

(8) Nothing in paragraph 50.38(1)“m” shall be construed to relieve an investment adviser or investment adviser representative from acting in the best interests of the client, including fulfilling the duty with respect to the best price and execution for the particular transaction for the client, nor shall paragraph 50.38(1)“m” relieve any investment adviser or investment adviser representative of any other disclosure obligations imposed by the Act;

~~n. Guaranteeing a client that a specific result will be achieved (gain or no loss) as a result of the investment adviser’s services with advice rendered;~~

~~o. Making, in the solicitation of clients, any untrue statement of a material fact, or omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which they are made, not misleading;~~

~~m. p. Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless disclosed with the client’s consent;~~

~~n. q. Taking any action, directly or indirectly, regarding securities or funds in which any client has any beneficial interest when the investment adviser is has custody or possession of such securities or funds and when the action of the investment adviser or investment adviser representative is subject to and in violation of the custody requirements provided by rule 191—50.39(502);~~

~~o. Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses:~~

~~(1) The services to be provided;~~

~~(2) The term of the contract;~~

~~(3) The advisory fee;~~

~~(4) The formula for computing the fee;~~

~~(5) The amount of prepaid fee to be returned in the event of contract termination or nonperformance;~~

~~(6) Whether the contract grants discretionary power to the investment adviser; and~~

~~(7) That no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract;~~

~~p. r. Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information in violation of Section 204A of the Investment Advisers Act of 1940;~~

~~q. Entering into, extending, or renewing any advisory contract in violation of Section 205 of the Investment Advisers Act of 1940. This provision applies to all advisers and investment adviser representatives registered or required to be registered under this Act, notwithstanding whether such adviser or investment adviser representative would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940;~~

~~r. Providing in an advisory contract any condition, stipulation, or provisions which purport to bind any person to waive compliance with any provision of this Act or of the Investment Advisers Act of 1940 or any other practice contrary to Iowa Code section 502.509(12) or Section 215 of the Investment Advisers Act of 1940;~~

~~s. Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative, or unethical in violation of Section 206(4) of the Investment Advisers Act of 1940;~~

~~regardless of whether the investment adviser or investment adviser representative is not registered or required to be registered pursuant to Section 203 of the Investment Advisers Act of 1940;~~

~~t. Engaging in conduct or any act, indirectly or through or by any other person, which is unlawful for such person to do directly under the provisions of this Act, its implementing rules, or order of the administrator;~~

~~u. Failing to disclose or providing incomplete disclosure to a client regarding any securities-related activities, or engaging in deceptive practices;~~

~~v. Soliciting or accepting a gift, directly or indirectly, from an unrelated customer that in the aggregate exceeds \$250 in a calendar year. A gift accepted by an immediate family member from an unrelated client shall be included in the aggregate limit. An investment adviser shall not solicit or accept from a client a gift transferred through a relative or third party to the investment adviser's benefit that would have the effect of evading this paragraph;~~

~~w. Soliciting or accepting being named as a beneficiary, executor, or trustee in a will or trust of an unrelated customer; and~~

~~x. Evading or otherwise negating the requirements of paragraph 50.38(1) "f," "g," "v," or "w" by terminating the customer relationship for the purpose of soliciting or accepting a loan or gift or being named as a beneficiary, executor or trustee in a will or trust that the agent is otherwise not permitted to solicit or accept. An investment adviser or investment adviser representative will not be in violation of this rule if the investment adviser or investment adviser representative has made a bona fide termination of the client relationship and conducted no securities-related business or other business for a period of three years with the client.;~~

~~y. Engaging in conduct deemed dishonest or unethical in rule 191—50.54(502); and~~

~~z. Employing any method or tactic which uses undue pressure, force, fright, or threat, whether explicit or implied, in connection with providing investment advice, or committing any act which shows that an investment adviser or investment adviser representative has exerted undue influence over a client.~~

~~50.38(2) Except as otherwise provided in subrule 50.38(3), it shall constitute a dishonest or unethical practice within the meaning of Iowa Code section 502.412(4) "m" for any An investment adviser, or investment adviser representative, or federal covered investment adviser shall not, directly or indirectly, to use publish, circulate, or distribute any advertisement that does any one of the following:~~

~~a. Refers to any testimonial of any kind concerning the investment adviser, or investment adviser representative, or federal covered investment adviser or concerning any advice, analysis, report, or other service rendered by such investment adviser, or investment adviser representative, or federal covered investment adviser.~~

~~b. Refers to past specific recommendations of the investment adviser, or investment adviser representative, or federal covered investment adviser that were or would have been profitable to any person, except that an investment adviser, or investment adviser representative, or federal covered investment adviser may furnish or offer to furnish a list of all recommendations made by the investment adviser, or investment adviser representative, or federal covered investment adviser within the immediately preceding period of not less than one year if the advertisement or list also includes both of the following:~~

~~(1) The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each such security.~~

~~(2) A legend on the first page in prominent print or type that states that the reader should not assume that recommendations made in the future will be profitable or will equal the performance of the securities in the list.~~

~~c. Represents that any graph, chart, formula, or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to the use of any graph, chart, formula or device.~~

d. Represents that any report, analysis, or other service will be furnished for free or without charge, unless such report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation.

e. Represents that the administrator has approved any advertisement.

f. Contains any untrue statement of a material fact, or any statement that is otherwise false or misleading.

**50.38(3)** With respect to federal ~~investment~~ covered investment advisers, the provisions of ~~this rule~~ subrule 50.38(2) apply only to the extent permitted by Section 203A of the Investment Advisers Act of 1940.

**50.38(4)** For the purposes of ~~this rule~~ subrule 50.38(2), the term “advertisement” shall include any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:

a. Any analysis, report, or publication concerning securities.

b. Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell.

c. Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell.

d. Any other investment advisory service with regard to securities.

This rule is intended to implement Iowa Code section ~~502.412(4)“m.”~~ 502.502(2).

ITEM 10. Rescind subrules 50.39(1) and 50.39(2) and adopt the following new subrules in lieu thereof:

**50.39(1) *Safekeeping required.*** It is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice, or course of business for an investment adviser, registered or required to be registered, to have custody of client funds or securities unless the following conditions are met:

a. *Notice to administrator.* The investment adviser notifies the administrator promptly in writing that the investment adviser has or may have custody. Such notification is required to be given on Form ADV.

b. *Qualified custodian.* A qualified custodian maintains those funds and securities:

(1) In a separate account for each client under that client’s name; or

(2) In accounts that contain only the investment adviser’s clients’ funds and securities, under the investment adviser’s name as agent or trustee for the clients, or, in the case of a pooled investment vehicle that the investment adviser manages, in the name of the pooled investment vehicle.

c. *Notice to clients.* If an investment adviser opens an account with a qualified custodian on its client’s behalf, under the client’s name, under the name of the investment adviser as agent, or under the name of a pooled investment vehicle, the investment adviser must notify the client in writing of the qualified custodian’s name and address and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information. If the investment adviser sends account statements to a client to whom the investment adviser is required to provide this notice, the investment adviser must include in the notification provided to that client and in any subsequent account statement the investment adviser sends that client a statement urging the client to compare the account statements from the custodian with those from the investment adviser.

d. *Account statements.* The investment adviser has a reasonable basis, after due inquiry, for believing that the qualified custodian sends an account statement, at least quarterly, to each client for which the qualified custodian maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period.

e. *Special rule for limited partnerships and limited liability companies.* If the investment adviser or a related person is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle):

(1) The account statements required under paragraph 50.39(1) “d” must be sent to each limited partner (or member or other beneficial owner); and

(2) The investment adviser must:

1. Enter into a written agreement with an independent party who is obliged to act in the best interest of the limited partners, members, or other beneficial owners to review all fees, expenses and capital withdrawals from the pooled accounts; and

2. Send all invoices or receipts to the independent party, detailing the amount of the fee, expenses or capital withdrawal and the method of calculation such that the independent party can:

- Determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement); and

- Forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser.

*f. Independent verification.* The client funds and securities of which the investment adviser has custody are verified by actual examination at least once during each calendar year, by an independent certified public accountant (CPA), pursuant to a written agreement between the investment adviser and the independent CPA, at a time that is chosen by the independent CPA without prior notice or announcement to the investment adviser and that is irregular from year to year. The written agreement must provide for the first examination to occur within six months of execution of the written agreement, except that, if the investment adviser maintains client funds or securities pursuant to rule 191—50.38(502) as a qualified custodian, the agreement must provide for the first examination to occur no later than six months after the investment adviser obtains the internal control report. The written agreement must require the independent CPA to:

(1) File a certificate on Form ADV-E with the administrator within 120 days of the time chosen by the independent CPA in paragraph 50.39(1) “f,” stating that the independent CPA has examined the funds and securities and describing the nature and extent of the examination;

(2) Notify the administrator within one business day of the finding of any material discrepancies during the course of the examination, by means of a facsimile transmission or electronic mail, followed by first-class mail, directed to the attention of the administrator; and

(3) File within four business days of the resignation or dismissal from, or other termination of, the engagement, or removing itself or being removed from consideration for being reappointed, Form ADV-E accompanied by a statement that includes:

1. The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent CPA; and

2. An explanation of any problems relating to examination scope or procedure that contributed to such resignation, dismissal, removal, or other termination.

*g. Investment advisers acting as qualified custodians.* If the investment adviser maintains, or if the investment adviser has custody because a related person maintains, client funds or securities pursuant to rule 191—50.39(502) as a qualified custodian in connection with advisory services the investment adviser provides to clients:

(1) The independent CPA that the investment adviser retains to perform the independent verification required by paragraph 50.39(1) “f” must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by the Public Company Accounting Oversight Board in accordance with its rules; and

(2) The investment adviser must obtain, or receive from its related person, within six months of execution of the written agreement and thereafter no less frequently than once each calendar year a written internal control report prepared by an independent CPA.

1. The internal control report must include an opinion of an independent CPA as to whether controls have been placed in operation as of a specific date, and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including the safeguarding of funds and securities held by either the investment adviser or a related person on behalf of the investment adviser’s clients, during the year;

2. The independent CPA must verify that the funds and securities are reconciled to a custodian other than the investment adviser or the investment adviser's related person; and

3. The independent CPA must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by the Public Company Accounting Oversight Board in accordance with its rules.

*h. Independent representatives.* A client may designate an independent representative to receive, on the client's behalf, notices and account statements as required under paragraphs 50.39(1) "c" and "d."

**50.39(2) Exceptions.**

*a. Shares of mutual funds.* With respect to shares of an open-end company as defined in Section 5(a)(1) of the Investment Company Act of 1940 ("mutual fund"), the investment adviser may use the mutual fund transfer agent in lieu of a qualified custodian for purposes of complying with subrule 50.39(1).

*b. Certain privately offered securities.*

(1) The investment adviser is not required to comply with paragraph 50.39(1) "b" with respect to securities that are:

1. Acquired from the issuer in a transaction or chain of transactions not involving any public offering;

2. Uncertificated and ownership thereof is recorded only on the books of the issuer or its transfer agent in the name of the client; and

3. Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(2) Notwithstanding subparagraph 50.39(2) "b"(1), the provisions of paragraph 50.39(2) "b" are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, and the audited financial statements are distributed, as described in paragraph 50.39(2) "d," and the investment adviser notifies the administrator in writing that the investment adviser intends to provide audited financial statements, as described in this subparagraph. Such notification is required to be provided on Form ADV.

*c. Fee deduction.* Notwithstanding paragraph 50.39(1) "f," an investment adviser is not required to obtain an independent verification of client funds and securities maintained by a qualified custodian if all of the following conditions are met:

(1) The investment adviser has custody of the funds and securities solely as a consequence of its authority to make withdrawals from client accounts to pay its advisory fee;

(2) The investment adviser has written authorization from the client to deduct advisory fees from the account held with the qualified custodian;

(3) Each time a fee is directly deducted from a client account, the investment adviser concurrently:

1. Sends the independent party designated pursuant to subparagraph 50.39(1) "e"(2) an invoice or statement of the amount of the fee to be deducted from the client's account; and

2. Sends the client an invoice or statement itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management on which the fee is based, and the time period covered by the fee; and

(4) The investment adviser notifies the administrator in writing that the investment adviser intends to use the safeguards provided in paragraph 50.39(2) "c." Such notification is required to be given on Form ADV.

*d. Limited partnerships subject to annual audit.* An investment adviser is not required to comply with paragraphs 50.39(1) "c" and "d" and shall be deemed to have complied with paragraph 50.39(1) "f" with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) if each of the following conditions are met:

(1) The adviser sends to all limited partners (or members or other beneficial owners), at least quarterly, a statement showing:

1. The total amount of all additions to and withdrawals from the fund as a whole as well as the opening and closing value of the fund at the end of the quarter based on the custodian's records;

2. A listing of all long and short positions on the closing date of the statement in accordance with the Financial Accounting Standards Board, Rule ASC 946-210-50; and

3. The total amount of additions to and withdrawals from the fund by the investor as well as the total value of the investor's interest in the fund at the end of the quarter;

(2) At least annually the fund is subject to an audit and distributes the fund's audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) and the administrator within 120 days of the end of the fund's fiscal year;

(3) The audit is performed by an independent CPA that is registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules;

(4) Upon liquidation, the adviser distributes the fund's final audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) and the administrator promptly after the completion of such audit;

(5) The written agreement with the independent CPA must require the independent CPA, upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed, to notify the administrator within four business days accompanied by a statement that includes:

1. The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent CPA; and

2. An explanation of any problems relating to audit scope or procedure that contributed to such resignation, dismissal, removal, or other termination;

(6) The investment adviser must also notify the administrator in writing that the investment adviser intends to employ the use of the statement delivery and audit safeguards described in paragraph 50.39(2) "d." Such notification is required to be given on Form ADV.

*e. Registered investment companies.* The investment adviser is not required to comply with rule 191—50.39(502) with respect to the account of an investment company registered under the Investment Company Act of 1940.

ITEM 11. Renumber subrule **50.39(3)** as **50.39(4)**.

ITEM 12. Adopt the following **new** subrule 50.39(3):

**50.39(3) Delivery to related persons.** Sending an account statement under paragraph 50.39(1) "e" or distributing audited financial statements under paragraph 50.39(2) "d" shall not satisfy the requirements of rule 191—50.39(502) if such account statements or financial statements are sent solely to limited partners (or members or other beneficial owners) that themselves are limited partnerships (or limited liability companies, or another type of pooled investment vehicle) and are related persons of the investment adviser.

ITEM 13. Amend renumbered subrule 50.39(4) as follows:

**50.39(4) Definitions.** For the purposes of this rule:

*a. "Control" means the power, directly or indirectly, to direct the management or policies of a person whether through ownership of securities, by contract, or otherwise. Control includes the following:*

(1) Each of the investment adviser's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions) is presumed to control the investment adviser;

(2) A person is presumed to control a corporation if the person:

1. Directly or indirectly has the right to vote 25 percent or more of a class of the corporation's voting securities; or

2. Has the power to sell or direct the sale of 25 percent or more of a class of the corporation's voting securities;

(3) A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership;

- (4) A person is presumed to control a limited liability company if the person:
1. Directly or indirectly has the right to vote 25 percent or more of a class of the interests of the limited liability company;
  2. Has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the limited liability company; or
  3. Is an elected manager of the limited liability company; or
- (5) A person is presumed to control a trust if the person is a trustee or managing agent of the trust.
- a. b. "Custody" means holding, directly or indirectly, client funds or securities, having any authority to obtain possession of client funds or securities, or having the ability to appropriate client funds or securities. The investment adviser has custody if a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services the investment adviser provides to clients. "Custody" includes:
- (1) Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in no case later than within three business days following inadvertent receipt of receiving them and the investment adviser maintains the records required under paragraph 50.42(1) "v";
  - (2) Receipt of checks drawn by clients and made payable to unrelated third parties, the record of which is maintained by the investment adviser in compliance with paragraph 50.42(1) "v" unless forwarded to the third party within 24 hours of receipt;
  - (3) (2) Any arrangement including, but not limited to, a general power of attorney pursuant to which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction; and
  - (4) (3) Any capacity including, but not limited to, general partner of a limited partnership, managing member of a limited liability company, a comparable position for another type of pooled investment vehicle, or trustee of a trust that gives the investment adviser or a person supervised by the investment adviser legal ownership of or access to client funds or securities.
- (4) Receipt of checks drawn by clients and made payable to third parties will not meet the definition of custody if forwarded to the third party within three business days of receipt and the investment adviser maintains the records required under paragraph 50.42(1) "v."
- c. "Independent certified public accountant" means a certified public accountant that meets the standards of independence described in Rule 2-01(b) and (c) of Regulation S-X (17 CFR 210.2-01(b) and (c)).
- b. d. "Independent representative" means a person who:
- (1) Acts as agent for an advisory client including, in the case of a pooled investment vehicle, limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle, and who is by law or contract required to act in the best interest of the advisory client or the limited partners or members, or other beneficial owners;
  - (2) Does not control, is not controlled by, and is not under common control with the investment adviser; and
  - (3) Does not have and has not had within the past two years a material business relationship with the investment adviser.
- e. e. "Qualified custodian" means the following independent institutions or entities that are not affiliated with the investment adviser by any direct or indirect common control and have not had a material business relationship with the investment adviser in the previous two years:
- (1) A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act;
  - (2) A registered broker-dealer registered in Iowa and with the SEC holding client assets in customer accounts;
  - (3) A registered futures commission merchant registered pursuant to Section 4(f)(a) of the Commodity Exchange Act that is holding client funds and security futures or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon in customer accounts; and

(4) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

*f.* "Related person" means any person, directly or indirectly, controlling or controlled by the investment adviser, and any person that is under common control with the investment adviser.

ITEM 14. Amend rule 191—50.40(502) as follows:

**191—50.40(502) Minimum financial requirements for investment advisers.**

**50.40(1)** An investment adviser registered or required to be registered under the Act that has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000 except:

*a.* An investment adviser that has custody solely due to direct fee deduction and that is also in compliance with the applicable safekeeping requirements of paragraph 50.39(1) "*d*" 50.39(2) "*c*" and the record-keeping requirements of rule 191—50.42(502) is not required to comply with the net worth requirements of this rule; and

*b.* An investment adviser having custody solely due to advising pooled investment vehicles and that is in compliance with the applicable safekeeping requirements of paragraph 50.39(1) "*e*" or 50.39(2) "*e*" 50.39(2) "*d*" and the record-keeping requirements of rule 191—50.42(502) is not required to comply with the net worth requirements of this rule; ;

~~*e.* An investment adviser having custody solely due to meeting the definition of custody as defined by subparagraph 50.39(3) "*a*"(3) and that is in compliance with the applicable safekeeping requirements of rule 191—50.39(502) is not required to comply with the net worth requirements of this rule;~~

~~*d.* An investment adviser having custody solely by meeting the definition of custody as defined by subparagraph 50.39(3) "*a*"(4) and that is in compliance with the safekeeping requirements of rule 191—50.39(502) is not required to comply with the net worth requirements of this rule; and~~

~~*e.* An investment adviser having custody solely due to serving as a trustee and that is in compliance with the applicable safekeeping requirements of paragraph 50.39(1) "*f*" and the record-keeping requirements of subrule 50.42(4) is not required to comply with the net worth requirements of this rule.~~

**50.40(2)** An investment adviser registered or required to be registered pursuant to the Act that has discretionary authority over client funds or securities but does not have ~~minimum net worth requirements due to the custody exceptions of subrule 50.40(1)~~ custody of client funds or securities shall maintain a minimum net worth of \$10,000 at all times.

**50.40(3)** An investment adviser registered or required to be registered pursuant to the Act ~~that accepts payment of more than \$500 from a client six or more months in advance of providing services~~ shall maintain a positive net worth at all times.

**50.40(4) to 50.40(6)** No change.

**50.40(7)** For purposes of this rule:

*a.* "Net worth" means an excess of assets over liabilities calculated in accordance with generally accepted accounting principles. The calculation of assets shall not include the following: prepaid expenses (except those prepaid expenses classified as assets under generally accepted accounting principles); deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, and all other assets of intangible nature; in the case of an individual, home(s), home furnishings, automobile(s), or any other personal items not readily marketable; in the case of a corporation, advances or loans to stockholders or officers; and in the case of a partnership, advances or loans to partners.

*b.* "Custody" means the same as defined in paragraph 50.39(3) "*a*." 50.39(4) "*b*."

*c.* No change.

This rule is intended to implement Iowa Code section 502.411(1).

ITEM 15. Amend rule 191—50.41(502) as follows:

**191—50.41(502) Bonding requirements for investment advisers.**

**50.41(1)** Every investment adviser registered or required to be registered under the Act:

~~a. Having~~ Having custody of or discretionary authority over client funds or securities shall be bonded in an amount determined by the administrator based upon the number of clients and the total assets under management of the investment adviser ~~except;~~ and

~~a.—An investment adviser that has custody solely due to direct fee deduction and that is also in compliance with the applicable safekeeping requirements of paragraph 50.39(1)“d” and the record-keeping requirements of rule 191—50.42(502) is not required to comply with bonding requirements of this rule;~~

~~b. An investment adviser that has~~ Having custody of or discretionary authority over client funds or securities ~~that when the investment adviser does not meet the minimum net worth standard provisions of subrules 50.40(1) and 50.40(2) must be bonded in the amount of the net worth deficiency rounded up to the nearest \$5,000;~~

~~e.—An investment adviser having custody solely due to advising pooled investment vehicles and that is in compliance with the applicable safekeeping requirements of paragraph 50.39(1)“e” and the record-keeping requirements of rule 191—50.42(502) is not required to comply with the bonding requirements of this rule;~~

~~d.—An investment adviser having custody solely due to meeting the definition of “custody” as defined by subparagraph 50.39(3)“a”(3) and that is in compliance with the applicable safekeeping requirements of rule 191—50.39(502) is not required to comply with the bonding requirements of this rule;~~

~~e.—An investment adviser having custody solely by meeting the definition of “custody” as defined by subparagraph 50.39(3)“a”(4) and that is in compliance with the safekeeping requirements of rule 191—50.39(502) is not required to comply with the bonding requirements of this rule;~~

~~f.—An investment adviser having custody solely due to serving as a trustee and that is in compliance with the applicable safekeeping requirements of paragraph 50.39(1)“f” and the record-keeping requirements of subrule 50.42(4) is not required to comply with the bonding requirements of this rule.~~

**50.41(2) and 50.41(3)** No change.

**50.41(4)** For purposes of this rule, “custody” means the same as defined in paragraph ~~50.39(3)“a.”~~ 50.39(4)“b.”

This rule is intended to implement Iowa Code section 502.411(5).

ITEM 16. Amend subrules 50.42(1) to 50.42(3) as follows:

**50.42(1)** An investment adviser registered or required to be registered pursuant to the Act shall make and keep true, accurate and current the following books, ledgers and records:

~~a. to d.~~ No change.

~~e.~~ All invoices, bills, or statements ~~of expenses or debts~~, or copies of those documents, relating to the investment adviser’s business as an investment adviser regardless of whether the expense or debt is paid or unpaid.

~~f.~~ All trial balances, financial statements ~~prepared in accordance with generally accepted accounting principles~~, and internal audit working papers relating to the investment adviser’s business as an investment adviser. For the purposes of this paragraph, “financial statements” means a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, a cash flow statement, and a net worth computation, if applicable, as required by subrule 50.40(7).

~~g. to k.~~ No change.

~~l.~~ Transactions involving beneficial ownership.

(1) A record of every transaction in a security in which the investment adviser or any advisory representative of the investment adviser has or by reason of any transaction acquires a direct or indirect beneficial ownership, except the following:

~~1.~~ transactions Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

~~2.~~ transactions Transactions in securities which are direct obligations of the United States.

(1) (2) The required record shall state, at a minimum, the title and amount of the security involved, the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition), the price at which the transaction was effected, and the name of the bank or broker-dealer with or through which the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction must be recorded no later than ten days after the end of the calendar quarter in which the transaction was effected. An investment adviser shall not be in violation of this paragraph because of a failure to record securities transactions of an advisory representative if the investment adviser establishes that the investment adviser instituted adequate procedures and used reasonable diligence to promptly obtain reports of all transactions required by this paragraph to be recorded.

~~(2) For purposes of this paragraph, the following definitions shall apply:~~

~~“Advisory representative” means any partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with the employee’s duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations:~~

- ~~1. Any person in a control relationship to the investment adviser;~~
- ~~2. Any affiliated person of a controlling person; and~~
- ~~3. Any affiliated person of an affiliated person.~~

~~“Control” means the power to exercise a controlling influence over the management or policies of a company, unless such power results solely from an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control such company.~~

*m.* Notwithstanding the provisions of paragraph 50.42(1)“l,” when the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except:

- (1) No change.
- (2) Transactions in securities which are direct obligations of the United States.

The record shall state the title and amount of the security involved, the date and nature of the transaction (i.e., purchase, sale, or other acquisition or disposition), the price at which it was effected, and the name of the broker-dealer or bank with or through which the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected. An investment adviser shall not be deemed to have violated the provisions of this subparagraph because of a failure to record securities transactions of an advisory representative if the investment adviser establishes that the investment adviser instituted adequate procedures and used reasonable diligence to promptly obtain reports of all transactions required to be recorded. The terms “advisory representative” and “control” shall mean the same as defined in paragraph “l.”

*n.* to *s.* No change.

*t.* A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self-regulatory organization pertaining to the investment adviser or any its investment adviser representative representatives, as defined by paragraph 50.42(1)“l,” subrule 50.42(11), including but not limited to all applications, amendments, renewal filings, and correspondence.

*u.* No change.

v. For each transaction in which the investment adviser inadvertently held or obtained the client's securities or funds and returned them to the client within three business days of receipt or forwarded a ~~third-party check drawn by a client and made payable to a third party~~ within ~~24 hours~~ three business days of receipt, a ledger or list of all funds or securities held or obtained with the following information:

(1) to (10) No change.

w. ~~For each security exempted from the custody rules by paragraph 50.39(2) "b"~~ If an investment adviser obtains possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving a public offering that comply with the exception from custody in paragraph 50.39(2) "b," the adviser shall keep:

(1) and (2) No change.

**50.42(2)** In addition to the retention requirements of subrule 50.42(1), an investment adviser having custody of client funds or securities, as defined by paragraph ~~50.39(3) "a,"~~ 50.39(3) "b," shall retain the following records:

a. Copies of all documents executed by each client, including but not limited to a limited power of attorney, pursuant to which the investment adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian;

b. to h. No change.

**50.42(3)** An investment adviser deemed, ~~pursuant to paragraph 50.39(2) "e,"~~ to have custody of client securities or funds because the investment adviser advises a pooled investment vehicle shall, in addition to any other applicable record retention requirements, keep the following records:

a. to c. No change.

ITEM 17. Rescind subrule **50.42(4)**.

ITEM 18. Renumber subrules **50.42(5)** to **50.42(12)** as **50.42(4)** to **50.42(11)**.

ITEM 19. Amend renumbered subrule 50.42(5) as follows:

**50.42(5)** Records required to be retained pursuant to rule 191—50.42(502) shall be kept as follows:

a. Except as provided in paragraphs ~~50.42(6) "b" to "e,"~~ 50.42(1) "k" and "p," all records required to be made under subrules 50.42(1) to 50.42(3) and paragraph 50.42(4) "a" shall be maintained and preserved in a readily accessible location for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, with no less than the first two years being kept in the principal office of the investment adviser.

b. to d. No change.

e. ~~A~~ Notwithstanding other record preservation requirements of rule 191—50.42(502), an investment adviser that has rendered or renders investment advisory services shall maintain at all times the following records at the investment adviser's business location at all times from which the customer or client is being provided or has been provided investment advisory services during the applicable retention period:

(1) and (2) No change.

ITEM 20. Amend rule 191—50.43(502) as follows:

### **191—50.43(502) Financial reporting requirements for investment advisers.**

**50.43(1)** Every registered investment adviser that has custody of client funds or securities or requires payment of advisory fees six months or more in advance and in excess of \$500 per client shall file with the administrator an audited balance sheet as of the end of the investment adviser's fiscal year. ~~except~~ Each balance sheet filed pursuant to this rule must be:

a. Examined in accordance with generally accepted auditing standards and prepared in conformity with generally accepted accounting principles;

b. Audited by an independent certified public accountant; and

c. Accompanied by an opinion of the accountant as to the report of financial position, and by a note stating the principles used to prepare the opinion, the basis of included securities, and any other explanations required for clarity.

~~a.—An investment adviser that has custody solely due to direct fee deduction and that is also in compliance with the applicable safekeeping requirements of paragraph 50.39(1)“d” and the record-keeping requirements of rule 191—50.42(502) is not required to comply with the financial reporting requirements of this rule;~~

~~b.—An investment adviser that has custody solely due to advising pooled investment vehicles and that is in compliance with the applicable safekeeping requirements of paragraph 50.39(1)“e” or 50.39(2)“e” and the record-keeping requirements of rule 191—50.42(502) is not required to comply with the financial reporting requirements of this rule; and~~

~~c.—An investment adviser that has custody solely due to serving as a trustee and that is in compliance with the applicable safekeeping requirements of paragraph 50.39(1)“f” and the record-keeping requirements of subrule 50.42(4) is not required to comply with the financial reporting requirements of this rule.~~

**50.43(2)** Every registered investment adviser that has discretionary authority over, but not custody of, client funds or securities shall file with the administrator a balance sheet, which need not be audited, but which must be prepared in accordance with generally accepted accounting principles or such other basis of accounting acceptable to the administrator and represented by the investment adviser or the person who prepared the statement as true and accurate, as of the end of the investment adviser’s fiscal year.

**50.43(3)** Each balance sheet filed pursuant to this rule must be:

~~a.—Examined in accordance with generally accepted auditing standards and prepared in conformity with generally accepted accounting principles;~~

~~b.—Audited by an independent certified public accountant; and~~

~~c.—Accompanied by an opinion of the accountant as to the report of financial position, and by a note stating the principles used to prepare the audit, the basis of included securities, and any other explanations required for clarity.~~

**50.43(4)** ~~50.43(3)~~ The financial statements required by this rule shall be filed with the administrator within 90 days following the end of the investment adviser’s fiscal year.

**50.43(5)** ~~50.43(4)~~ Every investment adviser that has its principal place of business in a state other than this state shall file only such reports as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state’s financial reporting requirements.

This rule is intended to implement Iowa Code section 502.411(2).

ITEM 21. Adopt the following new rule 191—50.45(502):

**191—50.45(502) Registration exemption for investment advisers to private funds.**

**50.45(1) Definitions.** For purposes of this rule, the following definitions shall apply:

“3(c)(1) fund” means a qualifying private fund that is eligible for the exclusion from the definition of an investment company under Section 3(c)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(c)(1).

“Private fund adviser” means an investment adviser who provides advice solely to one or more qualifying private funds.

“Qualifying private fund” means a private fund that meets the definition of a qualifying private fund in SEC Rule 203(m)-1, 17 CFR § 275.203(m)-1.

“Value of primary residence” means the fair market value of a person’s primary residence, less the amount of debt secured by the property up to its fair market value.

“Venture capital fund” means a private fund that meets the definition of a venture capital fund in SEC Rule 203(l)-1, 17 CFR § 275.203(l)-1.

**50.45(2) Exemption for private fund advisers.** Subject to the additional requirements of subrule 50.45(3), a private fund adviser shall be exempt from the registration requirements of Iowa Code section 502.403 if the private fund adviser satisfies each of the following conditions:

a. Neither the private fund adviser nor any of its advisory affiliates are subject to a disqualification as described in Rule 262 of SEC Regulation A, 17 CFR § 230.262;

b. The private fund adviser files with the state each report and amendment thereto that an exempt reporting adviser is required to file with the SEC pursuant to SEC Rule 204-4, 17 CFR § 275.204-4;

c. The private fund adviser pays any applicable fees.

**50.45(3) Additional requirements for private fund advisers to certain 3(c)(1) funds.** In order to qualify for the exemption described in subrule 50.45(2), a private fund adviser who advises at least one 3(c)(1) fund that is not a venture capital fund shall, in addition to satisfying each of the conditions specified in paragraph 50.45(3)“b,” comply with the following requirements:

a. The private fund adviser shall advise only those 3(c)(1) funds (other than venture capital funds) whose outstanding securities (other than short-term paper) are beneficially owned entirely by persons who, after deducting the value of the primary residence from the person’s net worth, would each meet the definition of a qualified client in SEC Rule 205-3, 17 CFR § 275.205-3, at the time the securities are purchased from the issuer.

b. At the time of purchase, the private fund adviser shall disclose the following in writing to each beneficial owner of a 3(c)(1) fund that is not a venture capital fund:

- (1) All services, if any, to be provided to individual beneficial owners;
- (2) All duties, if any, the private fund adviser owes to the beneficial owners; and
- (3) Any other material information affecting the rights or responsibilities of the beneficial owners.

c. The private fund adviser shall obtain on an annual basis audited financial statements of each 3(c)(1) fund that is not a venture capital fund and shall deliver a copy of such audited financial statements to each beneficial owner of the fund.

**50.45(4) Federal covered investment advisers.** If a private fund adviser is registered with the SEC, the adviser shall not be eligible for this exemption and shall comply with the state notice filing requirements applicable to federal covered investment advisers.

**50.45(5) Investment adviser representatives.** A person is exempt from the registration requirements if the person is employed by or associated with an investment adviser that is exempt from registration in this state pursuant to rule 191—50.45(502) and does not otherwise act as an investment adviser representative.

**50.45(6) Electronic filing.** The report filings described in paragraph 50.45(2)“b” shall be made electronically through the IARD. A report shall be deemed filed when the report and the fee required are filed and accepted by the IARD on the state’s behalf.

**50.45(7) Transition.** An investment adviser that becomes ineligible for the exemption provided by rule 191—50.45(502) must comply with all applicable laws and rules requiring registration or notice filing within 90 days from the date the investment adviser’s eligibility for this exemption ceases.

**50.45(8) Grandfathering for investment advisers to 3(c)(1) funds with nonqualified clients.** An investment adviser to a 3(c)(1) fund (other than a venture capital fund) that has one or more beneficial owners who are not qualified clients as described in paragraph 50.45(3)“a” is eligible for the exemption contained in subrule 50.45(2) if the following conditions are satisfied:

a. The subject fund existed prior to [the effective date of this rule];

b. As of [the effective date of this rule], the subject fund ceases to accept beneficial owners who are not qualified clients, as described in paragraph 50.45(3)“a”;

c. The investment adviser discloses in writing the information described in paragraph 50.45(3)“b” to all beneficial owners of the fund; and

d. As of [the effective date of this rule], the investment adviser delivers audited financial statements as required by paragraph 50.43(3)“c.”

This rule is intended to implement Iowa Code section 502.403.

ITEM 22. Adopt the following new rule 191—50.46(502):

**191—50.46(502) Contents of investment advisory contract.** The provisions of this rule shall apply to federal covered investment advisers to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the National Securities Markets Improvement Act of 1996.

**50.46(1)** It is unlawful for any investment adviser, investment adviser representative, or federal covered investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing:

*a.* The services to be provided, the term of the contract, the investment advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of termination or nonperformance of the contract, and any grant of discretionary power to the investment adviser, investment adviser representative, or federal covered investment adviser;

*b.* That no direct or indirect assignment or transfer of the contract may be made by the investment adviser, investment adviser representative, or federal covered investment adviser without the consent of the client or other party to the contract;

*c.* That the investment adviser, investment adviser representative, or federal covered investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

*d.* That the investment adviser, investment adviser representative, or federal covered investment adviser, if a partnership, shall notify the client or other party to the investment contract of any change in the membership of the partnership within a reasonable time after the change.

**50.46(2)** It is unlawful for any investment adviser, investment adviser representative, or federal covered investment adviser to:

*a.* Include in an advisory contract any condition, stipulation, or provisions binding any person to waive compliance with any provision of this Act or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of Section 215 of the Investment Advisers Act of 1940; or

*b.* Enter into, extend or renew any advisory contract contrary to the provisions of Section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers and investment adviser representatives registered or required to be registered under this Act, notwithstanding whether such adviser or representative would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940.

**50.46(3)** Notwithstanding paragraph 50.46(1) “*c*,” an investment adviser may enter into, extend or renew an investment advisory contract which provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds, or any portion of the funds, of the client if the conditions in paragraphs 50.46(3) “*a*” to “*d*” are met.

*a.* The client entering into the contract must be:

(1) A natural person or a company that, immediately after entering into the contract, has at least \$750,000 under the management of the investment adviser; or

(2) A person that the investment adviser and its investment adviser representatives reasonably believe, immediately before entering into the contract, is a natural person or a company whose net worth, at the time the contract is entered into, exceeds \$1,500,000. The net worth of a natural person may include assets held jointly with that person’s spouse.

*b.* The compensation paid to the investment adviser with respect to the performance of any securities over a given period must be based on a formula with the following characteristics:

(1) In the case of securities for which market quotations are readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940 (definition of “current net asset value” for use in computing periodically the current price of redeemable security), the formula must include the realized capital losses and unrealized capital depreciation of the securities over the period;

(2) In the case of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, the formula must include:

1. The realized capital losses of securities over the period; and

2. If the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; and

(3) The formula must provide that any compensation paid to the investment adviser under paragraph 50.46(3) “*b*” is based on the gains less the losses (computed in accordance with subparagraphs 50.46(3) “*b*”(1) and (2)) in the client’s account for a period of not less than one year.

c. Before entering into the advisory contract and in addition to the requirements of Form ADV, the investment adviser must disclose in writing to the client or the client's independent agent all material information concerning the proposed advisory arrangement, including the following:

(1) That the fee arrangement may create an incentive for the investment adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;

(2) Where relevant, that the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;

(3) The periods which will be used to measure investment performance throughout the contract and their significance in the computation of the fee;

(4) The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the investment adviser believes that the index is appropriate; and

(5) When the investment adviser's compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, how the securities will be valued and the extent to which the valuation will be independently determined.

d. The investment adviser (and any investment adviser representative) that enters into the contract must reasonably believe, immediately before entering into the contract, that the contract represents an arm's length arrangement between the parties and that the client (or in the case of a client which is a company as defined in paragraph 50.46(6) "d," the person representing the company), alone or together with the client's independent agent, understands the proposed method of compensation and its risks. The representative of a company may be a partner, director, officer or an employee of the company or of the trustee, where the company is a trust, or any other person designated by the company or trustee, but must satisfy the definition of client's independent agent set forth in paragraph 50.46(6) "c."

**50.46(4)** Any person entering into or performing an investment advisory contract under rule 191—50.46(502) is not relieved of any obligations under rule 191—50.38(502) or any other applicable provision of the Act or any rule or order thereunder.

**50.46(5)** Nothing in rule 191—50.46(502) shall relieve a client's independent agent from any obligation to the client under applicable law.

**50.46(6)** The following definitions apply for purposes of rule 191—50.46(502):

a. "*Affiliate*" shall have the same definition as in Section 2(a)(3) of the Investment Company Act of 1940.

b. "*Assignment*," as used in paragraph 50.46(1) "b," includes, but is not limited to, any transaction or event that results in any change to the individuals or entities with the power, directly or indirectly, to direct the management or policies of, or to vote more than 50 percent of any class of voting securities of, the investment adviser or federal covered investment adviser as compared to the individuals or entities that had such power as of the date when the contract was first entered into, extended or renewed.

c. "*Client's independent agent*" means any person who agrees to act as an investment advisory client's agent in connection with the contract. "Client's independent agent" does not include:

(1) The investment adviser relying on rule 191—50.46(502);

(2) An affiliated person of the investment adviser or an affiliated person of an affiliated person of the investment adviser including an investment adviser representative;

(3) An interested person of the investment adviser;

(4) A person who receives, directly or indirectly, any compensation in connection with the contract from the investment adviser, an affiliated person of the investment adviser, an affiliated person of an affiliated person of the investment adviser or an interested person of the investment adviser; or

(5) A person with any material relationship between the person (or an affiliated person of that person) and the investment adviser (or an affiliated person of the investment adviser) that exists, or has existed at any time during the past two years.

d. "*Company*" means a corporation, partnership, association, joint stock company, trust, or any organized group of persons, whether incorporated or not; or any receiver, trustee in a case under Title

11 of the United States Code, or similar official or any liquidating agent for any of the foregoing, in the liquidating agent's capacity as such. "Company" shall not include:

(1) A company required to be registered under the Investment Company Act of 1940 but which is not so registered;

(2) A private investment company is an entity which would be defined as an investment company under Section 3(a) of the Investment Company Act of 1940 but for the exception from that definition provided by Section 3(c)(1) of that Act;

(3) An investment company registered under the Investment Company Act of 1940; or

(4) A business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, unless each of the equity owners of any such company, other than the investment adviser entering into the contract, is a natural person or a company within the meaning of "company."

*e. "Interested person" means:*

(1) Any member of the immediate family of any natural person who is an affiliated person of the investment adviser;

(2) Any person who knowingly has any direct or indirect beneficial interest in, or who is designated as trustee, executor, or guardian of any legal interest in, any security issued by the investment adviser or by a controlling person of the investment adviser if that beneficial or legal interest exceeds:

1. One-tenth of one percent of any class of outstanding securities of the investment adviser or a controlling person of the investment adviser; or

2. Five percent of the total assets of the person seeking to act as the client's independent agent; or

(3) Any person or partner or employee of any person who has acted as legal counsel for the investment adviser within the past two years.

ITEM 23. Amend subrule 50.53(7) as follows:

**50.53(7)** Notwithstanding any statutory confidentiality provision, the administrator may share information with the ~~ESRU~~ college student aid commission for the sole purpose of identifying applicants or registrants subject to enforcement pursuant to Iowa Code section 261.126.

ITEM 24. Renumber rule ~~191—50.54(502)~~ as **191—50.55(502)**.

ITEM 25. Adopt the following new rule 191—50.54(272D):

**191—50.54(272D) Denial, suspension or revocation of agent or investment adviser representative registration for failure to pay state debt.**

**50.54(1)** Upon receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue (CCU), the administrator shall issue a notice to a securities agent or investment adviser representative applicant or registrant that any pending application for registration will be denied or any current registration will be suspended or revoked 60 days after the date of the notice. The notice shall be served by restricted certified mail, return receipt requested, or by personal service as provided by the Iowa Rules of Civil Procedure, unless the applicant or registrant accepts service personally or through authorized counsel.

**50.54(2)** The administrator shall provide the applicant or registrant with a copy of the certificate of noncompliance and shall provide a notice advising the applicant that:

*a.* The administrator intends to deny an application or to suspend or revoke a registration due to receipt of a certificate of noncompliance from the CCU;

*b.* The applicant or registrant must contact the CCU to schedule a conference or to otherwise obtain a withdrawal of a certificate of noncompliance;

*c.* Unless the CCU furnishes a withdrawal of a certificate of noncompliance to the administrator within 60 days of issuance of the notice, the application shall be denied or the registration shall be suspended or revoked;

*d.* The applicant or registrant does not have a right to a hearing before the administrator, but may file an application for hearing in district court pursuant to Iowa Code section 272D.9; and

*e.* The filing of an application for hearing with the district court will stay the proceedings of the division.

**50.54(3)** The filing of an application for hearing with the district court under Iowa Code section 272D.9 automatically stays action of the administrator until the administrator is notified of the resolution of the application.

**50.54(4)** If the administrator does not receive a withdrawal of the certificate of noncompliance from the CCU or a notice that an application for district court hearing has been filed, the administrator shall deny, suspend or revoke the application or registration 60 days after the notice prescribed in subrule 50.54(2) is issued.

**50.54(5)** Upon receiving a withdrawal of the certificate of noncompliance from the CCU, the administrator shall immediately halt action to deny an application or suspend or revoke a registration. The applicant or registrant shall be notified that action has been halted. If the application has already been denied or if a registration has already been suspended or revoked, the applicant or former registrant shall reapply for registration. The application shall be granted if the individual is otherwise in compliance with applicable laws, rules, regulations and orders.

**50.54(6)** All application fees must be paid by the applicant before a registration will be issued after the administrator has denied, suspended, or revoked a registration pursuant to Iowa Code chapter 272D.

**50.54(7)** Notwithstanding any statutory confidentiality provision, the administrator may share information with the CCU for the sole purpose of identifying applicants or registrants subject to enforcement pursuant to Iowa Code chapter 272D.

This rule is intended to implement Iowa Code chapter 272D.

ITEM 26. Amend rule 191—50.66(502) as follows:

**191—50.66(502) NASAA guidelines and statements of policy.**

**50.66(1)** No change.

**50.66(2)** *Registration of oil and gas programs.* All oil and gas programs filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Registration of Oil and Gas Programs, which were initially adopted by the NASAA membership on September 22, 1976, as amended on October 12, 1977; October 31, 1979; April 23, 1983; July 1, 1984; September 3, 1987; September 14, 1989; October 24, 1991; ~~and~~ May 7, 2007; and May 6, 2012; and published in CCH NASAA Reports at paragraph 2621.

**50.66(3)** and **50.66(4)** No change.

**50.66(5)** *Registration of commodity pool programs.* All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Registration of Commodity Pool Programs as adopted by the NASAA membership on September 21, 1983, effective January 1, 1984, amended August 30, 1990, amended May 7, 2007, amended May 6, 2012, and published in CCH NASAA Reports at paragraph 1201.

**50.66(6)** *Registration of equipment programs.* All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Equipment Programs as adopted by the NASAA membership on November 20, 1986, effective January 1, 1987, amended April 22, 1988, October 24, 1991, ~~and~~ May 7, 2007, and May 6, 2012, and published in CCH NASAA Reports at paragraph 1601.

**50.66(7)** to **50.66(9)** No change.

**50.66(10)** *Corporate securities definitions.* For securities registration purposes, the administrator adopts the various definitions set out in the NASAA Statement of Policy Regarding Corporate Securities Definitions as adopted by the NASAA membership on April 27, 1997, and as amended September 28, 1999, and March 31, 2008, and published in CCH NASAA Reports at paragraph 3812.

**50.66(11)** *Impoundment of proceeds.* When an impoundment of proceeds is necessary, it shall substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding the Impoundment of Proceeds as adopted by the NASAA membership on April 27, 1997, and as amended September 28, 1999, and March 31, 2008, and published in CCH NASAA Reports at paragraph 2151.

**50.66(12) Loans and other material affiliated transactions.** When there have been or will be loans or other material affiliated transactions, the transactions shall substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding Loans and Other Material Affiliated Transactions as amended by the NASAA membership on April 27, 1997, and March 31, 2008, and published in CCH NASAA Reports at paragraph 374.

**50.66(13) Options and warrants.** The issuance of options and warrants may be allowed by the administrator if the issuance is in substantial compliance, as determined by the administrator, with the NASAA Statement of Policy Regarding Options and Warrants as ~~amended~~ adopted by the NASAA membership on November 17, 1997, and as amended September 28, 1999, and as amended March 31, 2008, and published in CCH NASAA Reports at paragraph 2801.

**50.66(14) Preferred stock.** A public offering of preferred stock may be allowed by the administrator if the offering substantially complies, as determined by the administrator, with the NASAA Statement of Policy Regarding Preferred Stock as ~~amended~~ adopted by the NASAA membership on April 27, 1997, and as amended March 31, 2008, and published in CCH NASAA Reports at paragraph 3001.

**50.66(15) Promotional shares.** The registration of a security may include promotional shares if it substantially complies, as determined by the administrator, with the NASAA Statement of Policy Regarding Promotional Shares as adopted by the NASAA membership on April 27, 1997, and as amended September 28, 1999, and March 31, 2008, and published in CCH NASAA Reports at paragraph 3201.

**50.66(16)** No change.

**50.66(17) Unsound financial condition.** An issuer may be deemed to be in an unsound financial condition if it substantially meets, as determined by the administrator, the conditions provided within the NASAA Statement of Policy Regarding Unsound Financial Condition as adopted by the NASAA membership on April 27, 1997, and as amended September 28, 1999, and March 31, 2008, and published in CCH NASAA Reports at paragraph 3821.

**50.66(18) Use of proceeds.** The registration of a security may be disallowed if it does not substantially comply, as determined by the administrator, with the NASAA Statement of Policy Regarding Specificity in Use of Proceeds as adopted by the NASAA membership on April 27, 1997, and as amended September 28, 1999, and March 31, 2008, and published in CCH NASAA Reports at paragraph 3831.

**50.66(19) Registration of asset-backed securities.** All registrations of securities filing for registration by coordination or qualification shall substantially comply, as determined by the administrator, with the NASAA Guidelines for Registration of Asset-Backed Securities as adopted by the NASAA membership on October 25, 1995, amended May 7, 2007, and May 6, 2012, and published in CCH NASAA Reports at paragraph 501.

This rule is intended to implement Iowa Code sections 502.305(6) and 502.306(1).

ITEM 27. Amend subrule 50.87(1) as follows:

**50.87(1)** Church extension funds or similar organizations making continuous offerings shall be exempt pursuant to Iowa Code section 502.201(7) “b” provided the issuer:

*a.* to *d.* No change.

*e.* Unless disallowed by the administrator within 15 days after the applicant has filed the items required by paragraphs 50.87(1) “a” to “d,” is authorized beginning 15 days after the filing is received to sell pursuant to the exemption;

~~*e.*~~ *f.* After authorization, may sell securities for a period of 12 months; and

~~*f.*~~ *g.* Upon the expiration of the 12-month period in paragraph “~~e~~,” 50.87(1) “f,” files a renewal application that complies with the requirements of this subrule.

ITEM 28. Amend subrule 50.88(2) as follows:

**50.88(2)** Any natural person whose individual net worth, or joint net worth with that person’s spouse, at the time of the purchase exceeds \$1 million, excluding the value of the primary residence of the natural person.

ITEM 29. Adopt the following new rule 191—50.89(502):

**191—50.89(502) Designated securities manuals.** Nationally recognized securities manuals for purposes of Iowa Code section 502.202(2) “d” include Mergent’s Manuals, S & P Capital IQ Standard Corporation Descriptions, Fitch Investment Services, and Best’s Insurance Reports, Life-Health.

This rule is intended to implement Iowa Code section 502.202(2) “d.”